

Guys with Guns vs. Guys with Reports: Egyptian and Hungarian Comparisons

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Gábor Halmai Mo 15 Jul 2013

In Egypt, the military just ousted the democratically elected president of the country and suspended the new constitution. In Hungary, the European Parliament just adopted a report, which harshly denounces the new Fundamental Law enacted by the two-third majority governing coalition of the country. Both events are different in many respects, of course – and yet they both raise an important question: What kind and amount of external help is needed to avoid constitutional backsliding, and how does this help affect the sovereignty of the constitution-makers? Or, more generally: how can the international community of well-functioning democratic states long governed by the rule of law help emerging democracies in the constitution-making process and later through trans-judicial communication among judges to build up and maintain liberal constitutionalism?

Military Coup in Egypt

On July 3, 2013 military officers removed the country's first democratically elected president, Mohamed Morsi, and announced the suspension of the Constitution. They called for early presidential and parliamentary elections and named the head of the Supreme Constitutional Court as interim president.

What preceded the coup was a deepening division of the country, with an arrogant Muslim Brotherhood that misread electoral gains for a political blank check along with an incompetent and unpopular President on the one hand, and a reckless opposition that appeared ready to sink the country in order to bring down the Islamists on the other. This conflict brought 1.4 million people to the streets on 30 June to demand Morsi's departure, smaller, yet still large numbers responded to insist on his remaining in office. It is hard to know what ultimately pushed the military – which for some time had sought to avoid direct political involvement – to enter the fray as blatantly as it did on 1 July when, though ambiguous as to precise meaning, it essentially ordered the president to yield critics' demands or face the consequences. According to senior advisers of the president, just before the military takeover was about to begin, President Morsi refused to accept a final offer submitted by an Arab foreign minister, who said he was acting as an emissary of Washington. The unspecified foreign minister [asked](#) if Morsi would accept the appointment of a new prime minister and cabinet, one that would take over all legislative powers and replace his chosen provincial governors. Morsi said no.

This refusal might be a sign of President Morsi's inability to achieve political consensus, and that he was veering toward a more overtly Islamist agenda, as evidenced by the appointment as governor of Luxor a member of a militant group and his overt support for calls for jihad against the Syrian regime. But he was the democratically elected president of the country. Regardless of what one thinks about his presidency, his removal would constitute a blow to Egypt's fragile democracy, entrenching the view that mass protests backed by the army and foreign governments can trump the ballot box, and that investing in a peaceful democratic process is simply not [worthwhile](#).

The lessons to be learned from the failure is that one party cannot rule alone at a time of socio-political polarization and transformation, and that the new constitution, as a long-term social contract among Egyptians of varying ideological bents and ethnic, class and religious backgrounds, must be redrafted in ways acceptable to key political players and constituents, including the Muslim Brotherhood and their allies. International support, including that of the U.S. could have been important in limiting the creation of partisan constitutions in a situation of deep political division and power concentration in one group. Unfortunately in the case of Egypt, outsiders, like the U.S. or the European Union, have not really found proper mechanisms for how to do this. As a result, they are awkwardly defending with their lack of condemnation of events a de facto military coup, which cannot be a legitimate tool

against a democratically elected president. Many [argue](#) now that, following the Arab Spring, the society was too deeply divided for an election and for a new constitution. But if these decisions were taken by the people of Egypt, even if not all of them were listened to in the process, the consequences of their choices have to be fixed by them, too, and not by any external forces, even in the current extreme, emergency situation.

European Parliament's Denouncement of the Hungarian Constitution

Upon the request of the European Parliament, its Committee on Civil Liberties, Justice and Home Affairs (LIBE) prepared a [report](#) on the Hungarian constitutional situation, including the impact of the Fourth Amendment to the Fundamental Law of Hungary. With this so called Tavares Report (details [here](#)) the European Parliament has created a new framework for enforcing the principles of Article 2 of the Treaty of the European Union, which proclaims that the Union is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.” The report calls on the European Commission to institutionalize a new system of monitoring and assessment, including the obligation of the EU Commission to raise only Art. 2 issues in all its dealings with Hungary, the installation of a joint committee of Commission, Parliament and Council delegates to monitor Hungary's compliance with Art. 2 and the installation of a “[Copenhagen Committee](#)”.

The first reaction of the Hungarian government was a harsh rejection. Two days after the report was adopted by the European Parliament at its plenary session, the Hungarian Parliament adopted Resolution 69/2013, on “the equal treatment due to Hungary”.

The document is written in first person plural as an anti-European manifesto on behalf of all Hungarians: “We, Hungarians, do not want a Europe any longer where freedom is limited and not widened. We do not want a Europe any longer where the Greater abuses his power, where national sovereignty is violated and where the Smaller has to respect the Greater. We have had enough of dictatorship after 40 years behind the Iron Curtain.” The resolution argues that the European Parliament exceeded its jurisdiction by passing the report, and creating institutions that violate Hungary's sovereignty as guaranteed in the Treaty on the European Union. The text also points out that behind this abuse of power there are business interests, which were violated by the Hungarian government when it reduced the costs of energy paid by families, which could undermine the interest of many European companies which for years have gained extra profits from their monopoly in Hungary.

But interestingly enough Prime Minister Viktor Orbán in an [interview](#) to the Hungarian public radio on July 5, 2013, while using the same rhetoric, also admits that they did not aim to produce a liberal constitution. Here is what he said:

In Europe the trend is for every constitution to be liberal, this is not one. Liberal constitutions are based on the freedom of the individual and subdue welfare and the interest of the community to this goal.

When we created the constitution, we posed questions to the people. The first question was the following: what would you like; should the constitution regulate the rights of the individual and create other rules in accordance with this principle or should it create a balance between the rights and duties of the individual. According to my recollection more than 80% of the people responded by saying that they wanted to live in a world, where of course freedom existed, but welfare and the interest of the community could not be neglected and that this needs to be balanced in the constitution. I received an order and mandate for this.

For this reason the Hungarian constitution is a constitution of balance, and not a side-leaning constitution, which is the fashion in Europe, as there are plenty of problems there. Therefore, the Hungarians gave good, rational orders to the Parliament based on rational thinking, which it adopted.

In this regards, when people criticize the constitution on ideological grounds they are not criticizing the government but address criticism to the Hungarian people. They said the same thing, sorry I bring this up, from Moscow as well. The Hungarians are a fascist nation, declared also by Rakosi to get rid of the problem.

The European Union would like us to believe that they criticize the government but if we look at what they write, say or use to argue, truth to be told, they attack Hungary. The reduction in the price of electricity is not good for the government, it is good for the people and so they want to take away money from Hungarian families.

Three Aspects of Comparison

Comparing the constitution-making in Hungary and Egypt after 2011, there are three major aspects of comparison. The first relates to the democratic nature of the constitution-making process; the second to the impact on liberal constitutionalism in the substance of the constitutions; and, the third is the influence of global, transnational or foreign actors in the process.

As regards procedure, the common characteristic is that *the constitutional drafting procedures were non-inclusive and non-consensual*. The governing forces from different factions both in Hungary and Egypt were not ready to agree on the rules of the game and the desired constitutional system. So instead, each winning side proceeded with *a winner-take-all mentality* that was sure to alienate and frighten losers. Instead of consultations and consensus-building with other political parties and NGOs, the processes of constitutional preparation – in which Fidesz and the Muslim Brotherhood excelled – became arbiters of an ever-more polarized political stand-off. Fidesz didn't even try to hold a referendum on the final text of the constitution, while in Egypt the referendum was put before an under-informed and manipulated electorate.

Both Fidesz and the Muslim Brotherhood perceived their successive electoral victories as a mandate to shape the polity as they deemed fit, overlooking the need to share power, weakening checks and balances in the new constitutions. Dismissing their admittedly ineffective opposition, both Fidesz and the Muslim Brotherhood instead focused on trying to first sideline and later co-opt state actors they deemed more important, and thus potentially more threatening, namely the constitutional courts and the ordinary judiciary. Sometimes even the tools, used were the same. For instance to have more loyal judicial leaders and judges both governments threatened judges with early retirement on grounds that they were Mubarak- and Kádár-era holdovers. Also both governments have taken control of state media outlets and censored commercial media channels. In addition, curtailment of freedom of religion of the more than a hundred deregistered smaller non-Christian churches in Hungary, and the non-Islamic churches in Egypt is a common characteristic of the two constitutional systems.

Both Prime Minister Viktor Orbán, and the supporters of the removed President Morsi claim that the sovereignty of their constitutional order has illegally and illegitimately been threatened. (Actually an [editorial](#) of the Hungarian daily Magyar Hírlap, loyal to the government, has made this comparison by claiming that Morsi was ousted because of attempt to become independent.) In the case of Hungary, they claim that sovereignty has been threatened by the many criticisms and potential sanctions of the European institutions, and in Egypt, it is challenged by the military coup supported by foreign powers. There is a significant difference in this respect between the two countries. While Hungary is a voluntary member of both the European Union and the Council of Europe, these value communities have the legitimacy and some legal means to enforce the compliance with the joint principles and rules, which are violated by a member state. And we also should not forget the biggest difference of all: Orbán is still in power while Morsi is under house arrest. These facts prove the simple wisdom: Guys with guns are more powerful than guys with reports.

In the case of Egypt, the international community has less legal possibility to intervene, unless serious violations of

international human rights norm occur. Of course every state, including the United States can think over the moral and financial support of another polity, whose system does not fulfill the requirements of a liberal democratic constitutional system, but supporting a military coup, even in combination with a popular uprising, and even if they may have decisive leverage over Egypt^[1], does not belong to the set of legitimate tools.

But providing help to build up a new consensus both in Egypt and Hungary is the duty of every responsible player of the global constitutionalism, for instance by refusing to pay for a military dictatorship in the case of Egypt, and by closely monitoring the development by the EU in Hungary. Otherwise, there are good chances that the U.S. and Europe together will miss a revolution in these two important parts of the world.

[1] See Jeremy M. Sharp, *Egypt: Background and U.S. Relations*, Congressional Research Service, June 27, 2013. The report, which was published some days before the coup, overviews the significant military and economic assistance, the United States has provided to Egypt since the late 1970s, and still plans to provide for 2014, as President Obama is requesting \$1.55 billion in total bilateral aid to Egypt (\$1.3 billion in military aid and \$250 million in economic aid).

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